

REMARKS

This paper is submitted in response to the Office Action mailed October 2, 2003. Following this amendment, claims 1-49, 57-63, 71, 72, 75-77, and 81 are pending. Claims 50-56, 64-70, 74, 78-84 have been cancelled. Claims 23-40 have been withdrawn. Claims 1, 5-7, 9-10, 12-24, 27-22, 41-49, 57-63, 71-73, and 75-77 have been amended. Amendments for the claims will be discussed below. The claims have been amended to more particularly and distinctly claim the subject matter. Support for the amendments and new claims can be found throughout the specification and claims as originally filed, therefore, no new matter is added as a consequence of the amendments to the claims.

Claim Objections Should Be Withdrawn

The Examiner has made objections to several claims for various informalities. Corrections have been made in accordance with the Examiner's recommendations.

The Rejections under 35 U.S.C. § 112 Should Be Withdrawn

The Examiner has rejected claims 1-22, and 41-84 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants address each of the rejections below.

With regard to claim 14, Applicants have deleted the term "substantial" from the claim. Applicants assert that claim 14 is not indefinite, as amended.

With regard to the limitations "this primary explant" and "this secondary explant" recited in claims 1 and 17, Applicants have amended the claims to delete the use of these terms. The Examiner also notes that emergence *in vitro* is not an "explant." However, the specification defines "explant" as a plant at any developmental stage, substantially free of contaminating microorganisms, suitable for culture in a nutrient medium. (present specification page 6, para 0023). The specification also defines primary and secondary explants. When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz*, 893 F.2d 319, 13 USPQ2d 1320 (Fed. Cir 1989). Since the specification provides clear definitions for these terms and the meaning of the term must be interpreted as defined in the specification, Applicants submit that "explant" as recited in the claims may be defined as plant grown *in vitro*. However, as stated above, the claims have been amended to remove the recitation of the terms "explant," "primary explant," and "secondary explants."

With regard to the insufficient antecedent basis for limitations recited in claims 17 and 41, Applicants have amended the claims to have proper antecedent basis.

With regard to claim 41 step (l), the term "medium" has been inserted as suggested by the Examiner.

With regard to claim 41 steps (j) and (l), the claims have been amended to have proper antecedent basis.

With regard to claim 41 step (f), original steps e-f have been deleted to correct the confusion arising from the claim.

With regard to claim 41 steps (n,o), reference to the first and second set of first medium has been inserted into the claim to correct the confusion arising from a recitation of only the third set.

With regard to claims 42 and 45, Applicants assert that the claims, as amended, do not recite an intended use.

With regard to claims 46 and 60, the improper Markush language has been corrected. Claim 74 has been canceled.

With regard to claim 49, the term "rinsed" has been deleted from the claim.

With regard to claims 50-56, these claims have been canceled, rendering the rejection moot.

With regard to claim 57, the claim has been amended to delete the limitation "parafilm-sealed." In addition, the claim has been amended to rearrange the steps of the claim so that the seedlings are placed on the medium after sterilization. With regard to the recitation of "secondary explants," Applicants submit that the use of this term is proper since it is defined in the specification at page 6, para 0023.

With regard to claim 58, Applicants submit that the claim, as amended, does not recite an intended use.

With regard to claims 62 and 63, Applicants submit that the claims, as amended, have proper antecedent basis.

With regard to claims 64-70, these claims have been canceled, rendering the rejections moot.

With regard to claim 71, amendments have been made to correct the insufficient antecedent basis. In addition, the claim has been amended to remove the reference to a "third medium." With regard to the recitation of "secondary explants," the claim has been amended to delete this term.

With regard to claim 72, Applicants submit that the claim, as amended, does not recite an intended use.

With regard to claim 76, the claim, as amended, has proper antecedent basis.

With regard to claim 77, the claim has been amended to depend from claim 76.

With regard to claims 78-84, the claims have been either canceled or amended to not recite an intended use.

With regard to claim 78, the claim has been canceled, rendering the rejection moot.

With regard to the use of "MS basal culture medium," Applicants submit that this medium is clearly defined and known to one of skill in the art. Murashige and Skoog medium is commonly used in the field, defined by the reference disclosed in the specification (Murashige and Skoog, 1965, *Physiol. Plant* 15:433-497) with clearly defined components that are commercially available. The variations of the media also well known in the field and commercially available. Attached is a printout of the components of the Murashige and Skoog medium and its known variants from a commercial source of the medium (http://www.sigmaaldrich.com/suite7/Area_of_Interest/Life_Science/Plant_Biotechnology/Tissue_Culture_Protocols/Murashige___Skoog.html; Attachment A). Therefore, Applicants submit that the specification provide sufficient metes and bounds of the claimed invention.

For the foregoing reasons, Applicants submits that claims 1-22, and 41-84 are not indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully request the withdrawal of the rejection of the claims.

Double patenting

The Examiner alleges that claims 45 and 51-56 are substantial duplicates of claim 41. Claims 51-56 have been canceled. With regard to claim 45, Applicants submit that the claim is not a duplicate of claim 41. Claim 45 provides that the seeds germinate within 81 days, whereas claim 41 does not provide any time frames for the steps of the method.

The Examiner also alleges that claims 58 and 64-70 are substantial duplicates of claim 57. Claims 64-70 have been canceled. With regard to claim 58, Applicants submit that the claim is not a duplicate of claim 57. Claim 58 provides a range of explants that produce leaves, a mean number of leaves and a mean leaf length, whereas claim 57 make no mention of these parameters.

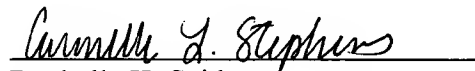
The Examiner also alleges that claims 78-84 are substantial duplicates of claim 71. Claims 78-84 have been canceled.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request withdrawal of the outstanding rejections and allowance of the pending claims.

Applicants believe that there is no fee required with the submission of this paper. However, if such fee is due or overpayment made in connection with this submission, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 02-4377 of Baker Botts L.L.P. Duplicate copies of this page are attached.

Respectfully submitted,
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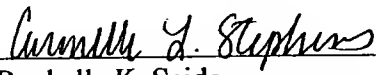
Attachment A

CONCLUSION

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Attachment A